WP(C) 9658/2003
BEFORE
HON'BLE MR.JUSTICE RANJAN GOGOI
Heard Dr. N.K.Singh, learned counsel for the petitioner Union and Mr.B.D.Das, le arned counsel appearing for the Respondents.
2. By an award dated 7.8.96 passed in Reference case No.3/93, the learned I ndustrial Tribunal, Assam gave the following reliefs to the 93 workers represent ed by the Petitioner Union :

1.The concerned workmen are to be treated to be in service as Muster Rol l employees till their regularization in regular vacancies. Till such time, the principle of no work no pay will govern the workmen concerned.

2. The concerned workmen are not to be disengaged or terminated by the m anagement i.e ASEB

3. Identity cards are to be issued to the concerned workmen as Muster Ro ll workers

4. Medical allowances at the rate stipulated is to be paid to the concer ned workmen.

3. The aforesaid award not having been implemented by any meaningful action, CR Case No. 2244/97 was filed by the petitioner Union which was closed by this C ourt by its order dated 12.5.99 by modifying direction No.2 above, holding that it is always open for the employer to disengage a Muster Roll employee by follow ing the due process of law but in doing so one set of Muster Roll employees cann ot be replaced by another. There was some consequential litigations by way of co ntempt petition following the aforesaid order of this Court dated 12.5.1999. The said facts not being very relevant are not recited in the present order. Howeve r, what must be noticed is that notwithstanding the order dated 12.5.99 of the Court ,no disengagement of any of the Muster Roll employees involved in the pres ent case was made by the Respondent ASEB.

4. The present writ petition has been filed, as according to the petitioner Union, now representing 81 out of the 93 eligible workmen, the award dated 7.8 .1996 read with the order dated 12.5.99 passed by the Court in CR No. 2244/97 h ave still not been implemented. The action of the Respondent authority in regula rizing some Muster Roll employees working in the Karbi Langpi Hydro Electric Pro ject has also been assailed in the writ petition.

5. The Respondents have filed two affidavits in the case. Of particular sig nificance will be the affidavit /show cause filed on 7.6.2007. A reading of the same would go to show that it is not the case of the Respondents that any of th e 81 existing employees covered by the award dated 7.8.96 have been terminated t ill date. In the affidavit/show cause filed, the Respondents have stated that fo llowing the enactment of Electricity Act, 2003,the Assam State Electricity Board has been unbundled into five different Companies engaged in the function of dis tribution and generation of electric power. It has been further stated that the concerned workmen were engaged in three divisions namely,(1) Barapani Killing Va lley ( BKV)

Investigation Division (2) Drilling Division and (3) Dallaima Construction Divi sion. Two of the above three divisions have been closed leaving Barapani Killing Valley Investigation Division only in operation. The said division has about on ly 15 permanent employees, neither there is any engagement of Muster Roll employ ees in the said division nor there is any vacancy in permanent posts so as to effect regularization of the concerned employees in terms of the award dated 9.8

.96 read with the order dated 12.5.99 passed in CR No. 2244/97.

6. Insofar as regularization of Muster Roll employees engaged in Karbi Langpi Hydro Electric Project is concerned, it is stated by the Respondents that all such regularizations were made from the existing workers of the Karbi Langpi Hydro Electric Project who had worked during the last 15 years. The Respondents in the affidavit/show cause filed have clearly stated that they are aware of their legal obligations with regard to for implementation of the award dated 7.8.96 read with the order dated 12.5.99 passed in CR No. 2244/97 and that such implementation could not be made only on account of lack of regular vacancies in the particular works division.

7. The Court has noticed that the award dated 7.8.96 as well as the order dated 12.5.99 passed by this Court in CR No. 2244/97 had not spelt out whether regularization of the concerned employees involved in the present writ petition was to be made against any specific post in any specified work Division of the ASEB. The aforesaid two judicial orders stem from the principle of equity based on the long period of service rendered by the concerned employees as Muster Roll workers. The Respondents, in all fairness, inspite of the leave to terminate being granted by the Court by order dated 12.5.99 passed in CR No. 2244/97, have not terminated any of the employees. The Respondents from time to time have expressed before the Court their willingness to carry out the Court's order subject to availability of vacancies.

8. In such a situation, the Court is of the view that the award dated 7.8.96 and the order of this Court dated 12.5.99 passed in CR No. 2244/97 should be clarified to mean that regularization of the concerned employees as per earlier orders may be made by the ASEB in a phased manner against any available post in any working Division in the restructured Companies following the enactment of the Electricity Act, 2003. Naturally, as the regularizations will be made in a phased manner no time limit can be imposed by the Court for completion of the exercise directed. However, it is made clear that even if it will be fortuitous in nature, the Respondents will not hesitate to accommodate such of the concerned workmen against available work. The above directions, in the considered view of the Court, will meet the ends of justice.

9. The writ petition shall accordingly stand closed in terms of the above.